

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 18, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1075

Cir. Ct. Nos. 2013TR1785
2013TR1786

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF WINNEBAGO,

PLAINTIFF-APPELLANT,

V.

BRADY E. BAUMAN,

DEFENDANT-RESPONDENT.

APPEAL from judgments of the circuit court for Winnebago County: THOMAS J. GRITTON, Judge. *Reversed.*

¶1 REILLY, J.¹ The County of Winnebago appeals the circuit court's dismissal of charges against Brady E. Bauman for operating a motor vehicle while

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

under the influence of an intoxicant (OWI) and operating a motor vehicle with a prohibited blood alcohol concentration. The court dismissed the charges after it granted Bauman's motion to suppress evidence due to an absence of probable cause² for his OWI arrest. We reverse.

¶2 Our federal and state constitutions guarantee the right to be free from unreasonable searches and seizures. U.S. CONST. amend. IV; WIS. CONST. art. I, § 11. A warrantless arrest is unlawful unless supported by probable cause, *State v. Lange*, 2009 WI 49, ¶19, 317 Wis. 2d 383, 766 N.W.2d 551, and any evidence seized incident to an unlawful arrest may not be used at trial, *State v. Hess*, 2010 WI 82, ¶46, 327 Wis. 2d 524, 785 N.W.2d 568. The evidence required for probable cause to arrest does not need to conclusively prove one is guilty of a crime, only that his or her "guilt is more than a possibility." *State v. Paszek*, 50 Wis. 2d 619, 625, 184 N.W.2d 836 (1971). "Probable cause to arrest for operating while under the influence of an intoxicant refers to that quantum of evidence within the arresting officer's knowledge at the time of the arrest that would lead a reasonable law enforcement officer to believe that the defendant was operating a motor vehicle while under the influence of an intoxicant." *Lange*, 317 Wis. 2d 383, ¶19.

¶3 As the facts in this case are not in dispute, we review independently whether they establish probable cause to arrest. *See id.*, ¶20. The Winnebago County sheriff's deputy who arrested Bauman was the only witness to testify at the suppression hearing. He testified that when he encountered Bauman in a

² Bauman did not challenge whether the stop was lawful; thus neither the circuit court nor this court on appeal need review whether the officer had reasonable suspicion to stop Bauman. *Cf. State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987).

parking lot, Bauman stated that he had been drinking, that he had driven a half-hour before, and that he had pulled over into the parking lot because he felt impaired. Bauman answered “yes” when the deputy asked, “Are you telling me that you are impaired and you were driving in an impaired state?” The deputy arrested Bauman.

¶4 The elements of an OWI violation are (1) the defendant drove a motor vehicle on a highway and (2) the defendant was under the influence of an intoxicant at the time the defendant drove. WIS JI—CRIMINAL 2663A. “‘Under the influence of an intoxicant’ means that the defendant’s ability to operate a vehicle was impaired because of consumption of an alcoholic beverage.” *Id.* When Bauman admitted to the deputy that he had driven to the parking lot and that he had been impaired when driving due to drinking, he essentially confessed to both elements of OWI. A reasonable law enforcement officer would believe that there was more than a possibility that Bauman was operating a motor vehicle while under the influence of intoxicants based on his first-hand admission. *See Laster v. State*, 60 Wis. 2d 525, 535, 211 N.W.2d 13 (1973) (“Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility.” (citation omitted)). The deputy therefore had probable cause to arrest Bauman, and the evidence collected subsequent to this lawful arrest should not have been suppressed. Accordingly, we reverse the circuit court’s decision to dismiss the charges as it was based on the improper suppression of evidence.

By the Court.—Judgments reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

